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7 THE HONORABLE BARBARA J. ROTHSTEIN
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IN THE UNITED STATE DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JENNIFER MILLER, EMAD AL-KAHLOUT,
HAMADY BOCOUM, CHRISTOPHER CAIN,
GARY GLEESE, JOSE GRINAN, KIMBERLY
HALO, CLARENCE HARDEN, KELLY
KIMMEY, JUMA LAWSON, STEVEN
MORIHARA, SHARON PASCHAL, and
PHILIP SULLIVAN, on behalf of themselves and
all others similarly situated,

Plaintiffs,

v.

AMAZON.COM, INC., and AMAZON
LOGISTICS, INC.,

Defendants.

Case No. 2:21-cv-00204-BJR

**AGREEMENT REGARDING
DISCOVERY OF ELECTRONICALLY
STORED INFORMATION AND
ORDER**

1 Plaintiffs Jennifer Miller, Emad Al-Kahlout, Hamady Bocoum, Christopher Cain, Gary
2 Gleese, Jose Grinan, Kimberly Halo, Clarence Harden, Kelly Kimmey, Juma Lawson, Steven
3 Morihara, Sharon Paschal, and Philip Sullivan, on behalf of themselves and all others similarly
4 situated (collectively, "Plaintiffs") and Defendants Amazon.com, Inc. and Amazon Logistics, Inc.
5 (collectively, "Defendants"), by and through their respective counsel, hereby stipulate to and
6 petition the Court to enter the following Agreement Regarding Discovery of Electronically Stored
7 Information and Order (the "Stipulation") that shall govern the production of documents,
8 testimony, exhibits, electronically stored information ("ESI"), and any other materials or
9 information (including any abstract, any copies, summaries, or derivations thereof) (collectively,
10 "Documents") produced by the Parties during discovery in the above-captioned action (the
11 "Action") as of the execution date of this Stipulation.

12 **A. Definitions**

13 1. As used herein, this Stipulation shall refer to Plaintiffs and Defendants collectively
14 as the "Parties" and individually as a "Party."

15 2. As used herein, the Party requesting production of Documents shall be referred to
16 as the "Requesting Party" and the Party producing Documents in response to such requests shall
17 be referred to as the "Producing Party."

18 3. As used herein, the term "Non-Party" means any person or entity that is not a Party
19 to the Action and will be requested to produce Documents, either voluntarily or in response to a
20 subpoena.

21 **B. General Terms**

22 4. An attorney's zealous representation of a client is not compromised by conducting
23 discovery in a cooperative manner. The failure of counsel or the parties to litigation to cooperate
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1 in facilitating and reasonably limiting discovery requests and responses raises litigation costs and
2 contributes to the risk of sanctions.

3 5. As provided in LCR 26(f), the proportionality standard set forth in Fed. R. Civ. P.
4 26(b)(1) must be applied in each case when formulating a discovery plan. To further the
5 application of the proportionality standard in discovery, requests for production of Documents
6 and related responses should be reasonably targeted, clear, and as specific as possible. This
7 Stipulation is intended to assist the Parties in identifying relevant, responsive information that has
8 been stored electronically and is proportional to the needs of the case. This Stipulation does not
9 supplant the Parties' obligations to comply with Fed. R. Civ. P. 34.

10 6. This Stipulation shall govern the production of Documents, including ESI.

11 7. The provisions set forth herein shall govern the production of Documents only by
12 the Parties and their affiliates. The Parties agree to send this Stipulation to Non-Parties.

13 8. Nothing in this Stipulation shall supersede the provisions of any protective order
14 or governing law.

15 9. Nothing in this Stipulation shall be construed to alter the Producing Party's rights
16 to withhold production of Documents because the source of the Documents is not reasonably
17 accessible or its production would be unduly burdensome, disproportionate to the needs of the
18 case, or duplicative.

19 10. By agreeing to this Stipulation, the Parties do not admit that any Documents
20 produced under its terms are relevant or admissible in this Action or in any other litigation.

21 11. This Stipulation does not establish any agreement as to either the appropriate
22 temporal or subject matter scope of discovery in the Action.

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1 12. All Parties reserve all rights under applicable law for matters relating to the
2 production of Documents that are not specifically addressed in this Stipulation, including the right
3 to object to production of any Documents. Nothing in this Stipulation shall be construed to affect
4 in any way the rights of any Party to object to the admissibility of any materials into evidence at
5 the trial of this Action.

6 13. All Documents, including the procedure for clawback of any Documents, shall be
7 governed by the Stipulated Protective Order entered in this Action. Responsive Documents in
8 TIFF format will be stamped with the appropriate confidentiality designation in accordance with
9 the Stipulated Protective Order entered in this Action. Each Document produced in native format
10 will have its confidentiality designation reflected on the endorsement on the corresponding TIFF
11 image slipsheet.

12 14. The Parties will take reasonable efforts to ensure that all Documents that they
13 produce are decrypted, although media on which the Parties produce Documents may be
14 encrypted for security purposes provided that appropriate password information is provided to all
15 Parties to which such media are produced. The Parties will make reasonable efforts to ensure that
16 any productions made are free from malware and provided on encrypted media or transmitted via
17 a secure file transfer system.

18 15. Nothing in this Stipulation shall be interpreted to require the disclosure of any
19 irrelevant information, or relevant Documents that a Party contends are protected from disclosure
20 by the attorney-client privilege, work-product doctrine, or any other applicable privilege,
21 protection, or immunity, nor shall this Stipulation require the production of Documents that are
22 not discoverable under applicable law. Nothing in this Stipulation, including any production of
23 Documents under this Stipulation, shall constitute a waiver by any Party of any claim of privilege

1 or other protection from discovery. No production of any Documents that the Producing Party
2 contends is attorney-client privileged or protected by the work-product doctrine shall constitute a
3 waiver of that privilege or protection, and all procedures in the Stipulated Protective Order entered
4 in this Action shall be followed with respect to such Documents. The Parties do not waive any
5 objections as to the production, discoverability, admissibility, or confidentiality of Documents.

6 16. Prior to making any motion to, or seeking the intervention of, the Court pertaining
7 to any dispute regarding the production of Documents, the Parties agree to confer as to discovery
8 of Documents, to exchange information regarding issues associated with any production of
9 Documents, and to attempt in good faith to resolve any disputes that arise under this Stipulation.
10 If a Party objects to any actions taken by another Party, the objecting Party shall state the specific
11 objection in a letter or e-mail to counsel for the opposing Party or Parties. Any practice or
12 procedures set forth herein may only be varied by written agreement of the Parties.

13 17. All notices, requests, and demands to or upon any of the Parties under this
14 Stipulation shall be in writing and, unless otherwise expressly provided herein, shall be deemed
15 to have been duly given or made when (i) for delivery by mail or courier, when delivered, or three
16 (3) business days after being deposited in the mail, postage prepaid, whichever is soonest; or (ii)
17 for delivery by facsimile or e-mail, when received, addressed as follows, or to such other address
18 as may be hereafter indicated by any Party:

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b. For Defendants:

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Any of the Parties may change its address and transmission numbers for Notices by Notice in the manner provided in this Paragraph.

18. The Parties agree to be bound by the terms of this Stipulation as of the date counsel for all Parties execute this Stipulation.

C. Document Disclosures.

19. Within 30 days of entry of this Stipulation, or at a later time if agreed to by the Parties, each Party shall disclose:

A. Custodians. The custodians most likely to have discoverable Documents in their possession, custody, or control. The custodians shall be identified by name, title, connection to the Action, and the type of Documents under the custodians' control.

B. Non-Custodial Data Sources. A list of non-custodial data sources (e.g., shared drives, servers), if any, likely to contain discoverable Documents.

1 C. Third-Party Data Sources. A list of third-party data sources, if any, likely
2 to contain discoverable Documents (e.g., third-party email providers, mobile device
3 providers, cloud storage) and, for each such source, the extent to which a Party is or is not
4 able to preserve Documents stored in the third-party data source.

5 D. Inaccessible Data. A list of data sources, if any, likely to contain
6 discoverable Documents (by type, date, custodian, electronic system or other criteria
7 sufficient to specifically identify the data source) that a Party asserts is not reasonably
8 accessible under Fed. R. Civ. P. 26(b)(2)(B).

9 **D. Scope of Document Preservation**

10 20. The Parties agree that only unique, non-duplicative sources of relevant Documents
11 need to be preserved.

12 21. The Parties will meet and confer regarding any issues involving Document
13 preservation, such as, for example, issues relating to categories or sources of information that are
14 not reasonably accessible or cannot reasonably be preserved because of undue burden or costs, as
15 well as categories or sources of responsive information subject to data privacy or protection laws.

16 22. Absent a showing of good cause by the Requesting Party, the Parties shall not be
17 required to modify the procedures used by them in the ordinary course of business to back-up and
18 archive Documents; provided, however, that the Parties shall preserve all discoverable Documents in
19 their possession, custody, or control.

20 23. Absent a showing of good cause by the Requesting Party, the following categories of
21 Documents need not be preserved:

22 a. Deleted, slack, fragmented, or other data only accessible by forensics.
23 b. Random access memory (RAM), temporary files, or other ephemeral data that are
24 difficult to preserve without disabling the operating system.

- 1 c. On-line access data such as temporary internet files, history, cache, cookies, and
the like.
- 2 d. Data in metadata fields that are frequently updated automatically, such as last-
opened dates.
- 3 e. Back-up data that are duplicative of data that are more accessible elsewhere.
- 4 f. Server, system, or network logs.
- 5 g. Data remaining from systems no longer in use that is unintelligible on the systems
in use.
- 6 h. Electronic data (e.g., email, calendars, contact data, and notes) sent to or from
mobile devices (e.g., iPhone, iPad, Android devices), provided that a copy of all
such electronic data is automatically saved in real time elsewhere (such as on a
server, laptop, desktop computer, or 'cloud' storage).

9 **E. Processes & Technology**

10 24. The Parties agree that each Producing Party will take reasonable steps to identify,
11 review, and produce responsive Documents that are otherwise discoverable. The Parties further
12 agree that each Producing Party is best situated to evaluate and utilize the procedures,
13 methodologies, and technologies, including Technology Assisted Review (TAR) and Continuous
14 Active Learning (CAL), appropriate to identify, review, and produce its own Documents.

15 25. While this Stipulation is intended to address the majority of Documents and data
16 sources handled in this matter, there may be situations where the Parties come into contact with
17 more complex, non-traditional or legacy data sources, such as ESI from social media, ephemeral
18 messaging systems, collaboration tools, mobile device applications, and modern cloud sources.
19 In the event that such data sources are relevant, responsive, and discoverable, the Parties agree to
20 take reasonable efforts to address the complexities introduced by such ESI, including, when
21 appropriate, to meet and confer regarding any issues raised by such ESI.

22 26. The Parties shall timely confer to attempt to reach agreement on appropriate search
23 terms and queries, file type and date restrictions, data sources (including custodians), and other
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1 appropriate computer- or technology-aided methodologies, before any such effort is undertaken.
2 The Parties shall continue to cooperate in revising the appropriateness of the search methodology
3 as warranted. Prior to running searches, the Producing Party shall disclose the data sources
4 (including custodians), search terms and queries, any file type and date restrictions, and any other
5 methodology that it proposes to use to locate Documents likely to contain responsive and
6 discoverable information. The Producing Party may provide unique hit counts for each search
7 query. After disclosure, the Parties will meet and confer regarding additional terms sought by the
8 Requesting Party.

9 27. The following provisions apply to search terms and queries of the Requesting
10 Party: focused terms and queries should be employed; broad terms or queries, such as product
11 and company names, generally should be avoided; a conjunctive combination of multiple words
12 or phrases (e.g., “computer” and “system”) narrows the search and shall count as a single search
13 term; a disjunctive combination of multiple words or phrases (e.g., “computer” or “system”)
14 broadens the search, and thus each word or phrase shall count as a separate search term unless
15 they are variants of the same word. The Producing Party may identify each search term or query
16 returning overbroad results demonstrating the overbroad results and a counter-proposal correcting
17 the overbroad search or query.

18 **F. Production Format**

19 28. See Exhibit A attached herein for the Parties’ agreed-upon production format.

20 29. The Parties may use analytics technology to identify email threads and need only
21 produce the unique, most inclusive copy and may exclude lesser inclusive copies. Upon
22 reasonable request, the Producing Party will produce a less inclusive copy of an email thread.

1 30. The Parties agree that any documents previously produced in other actions shall
2 be re-produced in this Action using the same metadata and production format used in the prior
3 action, with the exception that all such documents will receive additional, new Bates stamps for
4 this Action.

5 **G. Documents Protected from Discovery**

6 31. The Stipulated Protective Order entered in this Action shall govern the inadvertent
7 disclosure of privileged information.

8 **H. Privilege Logs**

9 32. A Producing Party shall create a privilege log of all Documents fully withheld
10 from production on the basis of attorney-client privilege, work-product doctrine, or any other
11 applicable privilege, protection, or immunity, unless otherwise agreed or excepted by this
12 Stipulation. Privilege logs shall include a unique identification number for each Document and
13 the basis for the claim (attorney-client privilege, work-product doctrine, or any other applicable
14 privilege, protection, or immunity). For ESI, the privilege log may be generated using available
15 metadata, including author/recipient or to/from/cc/bcc names; the subject matter or title; and date
16 created. Should the available metadata provide insufficient information for the purpose of
17 evaluating the attorney-client privilege, work-product doctrine, or any other applicable privilege,
18 protection, or immunity claim asserted, the Producing Party shall include such additional
19 information as required by the Federal Rules of Civil Procedure. Privilege logs will be produced
20 to all other Parties no later than thirty (30) days before the deadline for filing motions related to
21 discovery unless an earlier deadline is agreed to by the parties.

22 33. Redactions need not be logged so long as the basis for the redaction is clear.

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1 34. With respect to privileged or work-product information generated after the filing
2 of the complaint, the Parties are not required to include any such information in privilege logs.

3 35. The Parties agree that communications with counsel at any time may be excluded
4 from a privilege log, as they are presumptively privileged.

5 36. Activities undertaken in compliance with the duty to preserve information are
6 protected from disclosure and discovery under Fed. R. Civ. P. 26(b)(3)(A) and (B).

7 **I. Miscellaneous Provisions**

8 37. In scanning paper Documents, paper Documents should be logically unitized (*i.e.*,
9 distinct Documents should not be merged into a single record, and single Documents should not
10 be split into multiple records). In the case of an organized compilation of separate Documents
11 (*e.g.*, a binder containing several separate Documents behind numbered tabs), the physical
12 organizational box, divider, and any labels and the Documents that follow should be scanned
13 separately, but the relationship among the Documents in the compilation should be reflected in
14 the proper coding of the beginning and ending Document and attachment fields. The Parties will
15 make their best efforts to unitize the Documents correctly.

16 38. The Parties agree that the Producing Party will perform optical character
17 recognition (OCR) or other text recognition of paper documents or non-text searchable electronic
18 images.

19 39. This Stipulation shall have no effect on any Producing Party's right to seek
20 reimbursement for costs associated with collection, review, or production of Documents.

21 40. Nothing in this Stipulation is intended to or should be interpreted to narrow,
22 expand, or otherwise affect the rights of the Parties or Non-Parties to object to a subpoena or other
23 discovery matter.

1 41. Counsel executing this Stipulation warrant and represent that they are authorized
2 to do so on behalf of themselves and their respective clients.

3 **J. Modification**

4 42. This Stipulation may be modified only in writing by mutual agreement of the
5 Parties or by the Court for good cause shown.

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1 **IT IS SO STIPULATED**, though Counsel of Record.

2 DATED: September 10, 2024.

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55 *Attorneys for Defendant Amazon.com, Inc.*
56 *and Amazon Logistics, Inc.*

1 **ORDER**
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3 Based on the foregoing, IT IS SO ORDERED.
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6 DATED: September 11, 2024.
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12 The Honorable Barbara J. Rothstein
13 UNITED STATES DISTRICT JUDGE
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